

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ROBERT H MILLER,

Plaintiff,

v.

JOHN MCDANIEL, ET AL.,

Defendants.

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Case No. 6:20-CV-61-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff Robert H Miller, an inmate proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge John D. Love under 28 U.S.C. § 636. On February 14, 2020, Judge Love issued a Report and Recommendation (Docket No. 5), recommending that Plaintiff's claims be dismissed for purposes of *in forma pauperis* proceedings pursuant to the "three strikes" provisions of 28 U.S.C. § 1915(g). *Id.* at 2–3. A return receipt indicating delivery to Plaintiff was received by the Clerk on March 10, 2020. Docket No. 6.

This Court reviews the findings and conclusions of the Magistrate Judge *de novo* only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a *de novo* review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Plaintiff did not file objections in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews his legal conclusions to determine whether they

are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").


Having reviewed the Magistrate Judge's Report and Recommendation, the Court adopts the Report and Recommendation of the United States Magistrate Judge (Docket No. 5) as the findings of this Court.

Accordingly, it is hereby **ORDERED** that the Magistrate Judge's Report (Docket No. 5) be **ADOPTED**. It is further

ORDERED that the complaint is **DISMISSED WITH PREJUDICE** for purposes of *in forma pauperis* proceedings pursuant to 28 U.S.C. § 1915(g). It is further

ORDERED that Plaintiff's motion to proceed *in forma pauperis* (Docket No. 2) is **DENIED**. This Order does not bar refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the full \$400.00 filing fee. Plaintiff may resume the lawsuit if he pays the entire filing fee of \$400 within fifteen days after the entry of the Final Judgment.

So **ORDERED** and **SIGNED** this **8th** day of **April, 2020**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE